Supreme Court, U.S.
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No. 92-868

In The

Supreme Court of the United States

October Term, 1992

REPUBLIC INSURANCE GROUP, ET AL.,

Petitioners,

v.

CYNTHIA M. MALESKI, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, as Rehabilitator of The Mutual Fire, Marine and Inland Insurance Company,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Pennsylvania

RESPONSE TO MOTION OF REINSURANCE ASSOCIATION OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

RICHARD DISALLE, ESQUIRE
Counsel of Record
ROGER CURRAN, ESQUIRE
ROSE, SCHMIDT, HASLEY & DISALLE, P.C.
900 Oliver Building
Pittsburgh, PA 15222-5369
(412) 434-8600

Attorneys for Respondent, Cynthia M. Maleski, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, as Rehabilitator of The Mutual Fire, Marine and Inland Insurance Company

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RESPONSE TO MOTION OF REINSURANCE ASSOCIATION OF AMERICA FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent, Cynthia M. Maleski, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, as Rehabilitator ("Rehabilitator") of The Mutual Fire, Marine and Inland Insurance Company, objects to the Motion of Reinsurance Association of America ("RAA") for Leave to File Brief as *Amicus Curiae* in Support of the Petition for Writ of Certiorari of Republic Insurance Group, et al. ("Republic").

RAA does not identify, by name, its 26 member reinsurance companies, but states that "a number of [its] member companies are named parties" in the state court proceedings. (RAA *Amicus* Brief, p. 3.) If true, this raises a question as to the propriety of an *amicus* brief submitted on behalf of *parties* who did not seek review in this Court. In fact, it is unknown whether the RAA members who were parties in the state court proceedings even filed objections to the Plan.

Respondent withheld consent to the filing of RAA's *amicus* brief because, *inter alia*, the Petition for Writ of Certiorari filed on behalf of Republic is procedurally flawed and its defects cannot be cured or corrected by the arguments of RAA. As stated in Respondent's Brief in Opposition to the Republic Petition, although Republic is asking this Court to find that the Mutual Fire Plan of Rehabilitation impairs its "explicit contractual rights" in

violation of Article I, Section 10 of the United States Constitution, those specific contract provisions, which are now at the heart of Republic's claim, were not entered into the record below. Respondent respectfully submits that the arguments of RAA, as *amicus*, are no substitute for a proper record.

Moreover, the Petition of Republic seeks to have this Court review the Pennsylvania Supreme Court's findings and conclusions as to matters of substantive Pennsylvania law, which this Court has consistently refused to do. *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981); *Hortonville Dist. v. Hortonville Ed. Assoc.*, 426 U.S. 482, 488 (1976). In particular, Republic's disagreement lies with the Court's findings that case reserves and IBNR, which are unliquidated and contingent as of the date of the filing of a petition for rehabilitation, are not "mutual," under Pennsylvania law, and hence, not subject to setoff, whether in rehabilitation or in liquidation. (A-19.)[1] Likewise, the Pennsylvania Supreme Court specifically found, relying upon well-settled Pennsylvania law, that setoff is an equitable remedy and thus, is permissive, not mandatory. (A-19.)

RAA's request for leave to file a brief as *amicus curiae* in support of the Republic Petition is misplaced and clearly misapprehends the fundamental flaws in the Republic Petition which militate so strongly against consideration by this Court. While RAA may be interested in the outcome of the Republic Petition, the existence of

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[1] Appendix references are to the Appendix attached to the Petition of Republic.

such an "interest" does not alter the serious inadequacies of the Republic Petition. As stated in Respondent's Brief in Opposition, the Petition of Republic completely fails to present an issue involving an adjudication of federal rights for review by this Court. The arguments of RAA, as *amicus curiae*, serve no purpose.

Respondent respectfully requests that this Court deny RAA's Motion for Leave to File Brief as *Amicus Curiae* in Support of the Petition of Republic.

Respectfully submitted,

RICHARD DISALLE, ESQUIRE
Counsel of Record
ROGER CURRAN, ESQUIRE
ROSE, SCHMIDT, HASLEY & DISALLE, P.C.
900 Oliver Building
Pittsburgh, PA 15222-5369
(412) 434-8600

Attorneys for Respondent, Cynthia M. Maleski, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, as Rehabilitator of The Mutual Fire, Marine and Inland Insurance Company